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*Reviewed by Maxwell Bloomfield**

These books explore a common theme: the nature and functioning of modern educational bureaucracies. Robert Stevens provides a comprehensive historical overview of the rise of institutionalized legal training in the United States; Duncan Kennedy attacks the inequities created by the hierarchical structure of law schools and, by extension, of all American society; and Stephen Arons challenges the constitutionality of a coercive majoritarian system of elementary and secondary schooling. Each author brings to his subject the insights of a lawyer and legal educator; their divergent views highlight the complex interplay that has long existed between professional norms and the values of an evolving democratic society.

Before the Civil War, as Stevens explains, law schools played only a minor role in professional training. State legislatures prescribed few qualifications for admission to the bar, and most aspiring attorneys prepared for a professional career by self-study and apprenticeship in the office of an established practitioner. A liberal recruitment policy satisfied the demands of republican ideology, which prized aggressive individualism and laissez-faire government. As the nation entered a period of accelerated economic growth after 1865, however, elite lawyers—like their counterparts in other professions—called for more rigorous academic instruction as part of a general campaign to upgrade admission requirements and weed out "unfit" applicants. The proliferation of law schools in the late nineteenth century paralleled the rise of specialized graduate departments in American universities, and the

* Professor of History, The Catholic University of America. B.A. 1952, Rice University; LL.B. 1957, Harvard University; Ph.D. 1962, Tulane University.

teaching innovations of Christopher Columbus Langdell appealed strongly to the scientific temper of the age.

Langdell, Dean of Harvard Law School from 1870 to 1895, believed that law was a theoretical science whose overarching substantive principles could only be mastered through the careful analysis of appellate court opinions. The "case method" of legal instruction required the use of specially prepared casebooks of leading decisions; it also demanded the recruitment of a new class of full-time law professors, who should train students to reason inductively by engaging them in intensive discussion of case material—a procedure the early Langdellians modestly termed the "Socratic dialogue." When the new approach failed to uncover a coherent body of interlocking objective rules, its supporters urged that it be retained for more pragmatic reasons: it taught students the skill of "thinking like a lawyer"; it conformed with intellectual trends in other "scientific" disciplines; and it was cost-effective, since it worked as well with very large classes as with small ones. "The lasting influence of the case method," Stevens notes, "was to transfer the basis of American legal education from substance to procedure and to make the focus of American legal scholarship—or at least legal theory—increasingly one of process rather than doctrine" (p.56). Furthermore, as William C. Chase has argued in a related study,[1] the triumph of the case method meant that the work of important nonjudicial bodies, such as administrative agencies, did not become the subject of serious study in law schools until well into the twentieth century.

Not all law schools rushed to embrace the Harvard model, of course. A more representative institution in the late nineteenth century was the Buffalo Law School, founded by the local bar in 1887 to supplement the clerkship experience. It was part-time, inexpensive, practical, and open to women and minorities. Such part-time and night schools were training almost as many students in 1916 as the regular day schools. Confronted by increasing competition from these non-elite institutions, Langdellian professors from thirty-two schools founded the Association of American Law Schools (AALS) in 1900 to promote uniformity in legal education and, incidentally, to drive their rivals out of business.

The ensuing "Battle of the Standards" raged for the next fifty years, with the American Bar Association and the AALS joined in a somewhat prickly alliance against the middle-grade and marginal schools. Stevens analyzes the course of this unedifying contest in painstaking detail and relieves the tedium of statistical reports with an occasional flash of wry humor. The motives of those who advocated the imposition of uniformly high standards upon all schools were mixed, he observes. Altruists, elitists, and racists supported a crusade that aimed at restricting access

1. W. Chase, The American Law School & The Rise of Administrative Government (1982).

to the bar for recent immigrants, blacks, and other "undesirables." Their early lobbying efforts made little headway against the stubborn opposition of night school proprietors and their allies in state legislatures, however. A major breakthrough did not occur until the 1930s, when prolonged economic depression forced the weakest schools to shut down and induced a majority of state legislatures to approve some ABA proposals as a way of alleviating an overcrowded job market.

Progress toward a unitary system of legal education thereafter proceeded in two stages. During the 1930s states began to insist upon law school training as the sole method of preparing for the bar. Apprenticeship in a law office, with its clinical and idiosyncratic features, thus disappeared as an alternative mode of acquiring legal knowledge and experience. Then, in the aftermath of World War II, state legislatures moved to standardize legal education still more by requiring that students attend only law schools approved by the ABA or the AALS. The circle was now complete: law professors monopolized the field of legal education, and in most states applicants could not take the bar examination unless their competence had already been certified by a diploma from an accredited law school.

In practice a unitary and standardized model of legal education has served to perpetuate the case method and a traditional curriculum. Although the Legal Realists of the 1920s and 1930s introduced some interdisciplinary courses and joint-degree programs, their "functionalism" did not lead to any major restructuring of the form or content of legal training. Nor have later initiatives produced more positive results. The contemporary law school, Stevens concludes, remains essentially a trade school, whose curriculum owes much to the attitudes of the organized bar and to the requirements of standardized bar examinations.[2]

Duncan Kennedy's "polemic against the system" attributes the conditions described in *Law School* to one overriding cause: the dominance of "illegitimate hierarchies" throughout American society. "The general thesis," he remarks,

> is that law schools are intensely political places, in spite of the fact that they seem intellectually unpretentious, barren of theoretical ambition or practical vision of what social life might be. The trade school mentality, the endless attention to trees at the expense of forests, the alternating grimness and chumminess of focus on the limited task at hand, all these are only a part of what is going on. The other part is ideological training for willing service in the hierarchies of the corporate welfare state (p.1).

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2. This summary derives from my earlier review of Stevens's book. See Bloomfield, Book Review, 8 ALSA Forum 487 (1984).

In more specific terms, Kennedy charges that the "Socratic" method conditions students to submit to authoritarian role models (*e.g.*, white, middle-class, male professors and their postgraduate analogues, judges and senior partners); that "legal reasoning," as taught by the case method, ignores political values and justifies existing legal rules; and that a meritocratic ideology conceals glaring inequities in admission and placement procedures. An oppressive legal hierarchy further replicates and reinforces other hierarchical structures that together compose the modern capitalist state.

"[T]he state," Kennedy argues in a perceptive passage, "has blurred into the rest of society just as the proletariat has blurred into the middle class" (p.87). Private groups routinely perform public functions today, and power is dispersed among many "corporate cells," whose internal hierarchies rely upon a common meritocratic ideology for their legitimacy. The only way to effect fundamental change in such a system is to transform it cell by cell, "until we reach the critical point at which the interconnectedness of the system makes it possible to develop it as a whole toward a new unity" (p.98).

For radical law students and professors, Kennedy recommends a "workplace struggle" against hierarchical oppression that might include: calculated student disruption of authoritarian classes; demands for a new curriculum, which should emphasize clinical experience and feature an interdisciplinary "legal decision course" to point up the ideological nature of law; proposals for changes in the placement process to enhance the competitive position of small and politically activist law firms; and the formation of "left study groups," as testing grounds for the development of non-hierarchical relationships. Since group self-determination is central to Kennedy's thinking, he refuses to define specific goals and policies for the emerging egalitarian society. He concedes, however, that his "left bourgeois intelligentsia" may have an uphill fight in seeking to mobilize those enmeshed in the system; and this caveat, I fear, may apply with special force to organizational efforts in the law school workplace. For if the educational process is as inherently ideological as Kennedy contends, how can one hope to prevail against the sixteen years of brainwashing and exposure to false meritocratic values which law students have already experienced?

Such, at least, is one lesson to be drawn from Stephen Arons's *Compelling Belief.* Arons charges that compulsory public education, as it has developed in the United States since the late nineteenth century, has enabled local political majorities to impose their cultural values upon dissenters, in violation of First Amendment guarantees. To support this position, he takes a close and sympathetic look at three forms of dissent that have assumed increasing importance in recent years: censorship battles over textbooks and the "world view" they convey; efforts by disaffected families to educate their children at home; and the creation of alternative schools by private groups determined to preserve a distinctive subculture. Although some of these challenges to "state-sup-

ported orthodoxy" have been resolved through litigation, Arons argues that judges have failed to recognize the true nature of the problem:

> Most judges and legislators have not perceived the centrality of school socialization to the lives of families and the raising of children; neither have they acknowledged the relationship between the formation of world views in children and the expression of opinion protected by the First Amendment. And finally, the courts have been so preoccupied with preventing religious impositions in publicly supported schools that they have virtually ignored the more significant imposition of ideology (p.198).

The remedy, he suggests, lies in an expansive judicial reading of the free speech and free press provisions of the First Amendment, for which a precedent may be found in the "underutilized" case of *West Virginia Board of Education v. Barnette* (1943).[3] There the United States Supreme Court stuck down a compulsory flag salute law because it forced public school students to declare a belief and thus violated their right to freedom of opinion under the First Amendment. Arons would like to extend this principle to protect the formation, as well as the expression, of individual opinion against manipulation by a coercive educational bureaucracy. Because children in public schools are conditioned to accept majoritarian ideological premises, Arons urges, it is essential to the future of the democratic process that dissidents be permitted to develop, within their own institutions, alternative visions of the general welfare. Before the chief victims of majoritarian orthodoxy—the poor, the working class, and racial minorities—can exercise their new freedom, however, the entire educational system must be restructured along libertarian lines:

> To create a separation of school and state and to establish government neutrality in place of the current ideological favoritism requires insuring the reality of school choice for all families and prohibiting local, state, or federal governments from regulating the content of nongovernment schooling, directly or indirectly, except where compelling justifications [such as preventing racial discrimination in schools] exist (p.213).

Whatever one may think of Arons's remedial program—and, in my view, it would promote cultural chaos rather than pluralism—there is no doubt that he has written a thoughtful and provocative study. Like Stevens and Kennedy, he has probed deeply into the relationship between law, education, and society, with results that should interest any serious observer of contemporary American life.

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3. 319 U.S. 624, 63 S. Ct. 1178 (1943).